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22       **UNITED STATES DISTRICT COURT**  
23       **NORTHERN DISTRICT OF CALIFORNIA**  
24       **SAN FRANCISCO DIVISION**

25       **IN RE TRANSPACIFIC PASSENGER**  
26       **AIR TRANSPORTATION**  
27       **ANTITRUST LITIGATION**

28                   Civil Case No. 3:07-cv-05634-CRB

1       MDL No. 1913

2       **This Document Relates To:**

3                   **PLAINTIFFS' RESPONSE TO OBJECTION**  
4                   **BY JEANETTE STEVENS T/A ELM CO.**  
5                   **(ECF NO. 1406)**

6       **ALL ACTIONS**

1     **I.     OVERVIEW**

2                 On May 9, 2025, Claimant Jeanette Stevens t/a Elm Co. filed a petition/objection seeking  
 3 the Court to: (1) deny attorneys' fees to Class Counsel in connection with its re-examination of  
 4 certain claims in early 2025; (2) enforce the Order Granting Plaintiffs' Motion for Secondary  
 5 Distribution of Remaining Settlement Funds and Request for Attorneys' Fees and Reimbursement  
 6 of Expenses (ECF No. 1378) ("Secondary Distribution Order");<sup>1</sup> (3) enjoin the Settlement  
 7 Administrator, Rust Consulting, Inc. ("Rust"), and Co-Lead Class Counsel for Plaintiffs ("Class  
 8 Counsel") from re-examining any previously approved claims in connection with the secondary  
 9 distribution of the remaining net settlement funds anticipated to occur on or by July 1, 2025. Elm  
 10 Co.'s Objection (ECF No. 1406). For the foregoing reasons, the Court should overrule this  
 11 Objection.

12     **II.     ARGUMENT**

13                 **A.     Class Counsel Is Not Seeking Attorneys' Fees**

14                 Elm Co.'s Objection requests that the Court "[d]eny any further attorney fees based on  
 15 these 2025 audits." Objection at 4. As an initial matter, Class Counsel is not seeking attorneys'  
 16 fees in connection with its re-examination of certain claims earlier this year. As previously stated,  
 17 "Class Counsel will not seek further attorneys' fees in this litigation after this motion." Plaintiffs'  
 18 Motion for Secondary Distribution of Remaining Settlement Funds and Request for Attorneys'  
 19 Fees and Reimbursement of Expenses (ECF No. 1347); Secondary Distribution Order ¶ 10(b).  
 20 The Court should overrule Elm Co.'s request because Plaintiffs re-examined certain claims for  
 21 the benefit of legitimate Settlement Class Members earlier this year and have no intention of  
 22 seeking additional attorneys' fees in this matter.

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 25                 <sup>1</sup> This request is similar to that of Claimant David Gould, whose Motion to Compel Prompt  
 26 Compliance with the Second Distribution Order the Court denied on May 5, 2025 (ECF No.  
 27 1405).

1           **B. The Secondary Distribution Will Occur On or By July 1, 2025**

2       Elm Co.’s Objection requests that the Court “[e]nforce the prior order concerning the  
 3 second-round pro rata distribution under the specific terms ordered and in the filings in February  
 4 2025[.]” Objection at 5. As noted, *supra* at note 1, Claimant David Gould recently moved to  
 5 compel Rust and Class Counsel to promptly comply with the Secondary Distribution Order,  
 6 which the Court denied on May 5, 2025 (ECF No. 1405). Specifically, this Court stated it was  
 7 “satisfied with Plaintiffs’ assertion that ‘Plaintiffs and Rust anticipate making’ the ‘distribution  
 8 on or before July 1, 2025.’” (ECF No. 1405). Furthermore, Plaintiffs do not know what Elm Co.  
 9 means when it references “filings in February 2025[.]” No filing occurred in February 2025. *See,*  
 10 *generally, In re Transpacific Passenger Air Transp. Antitrust Litig.*, Case No. 3:07-cv-05634.  
 11 The Court should overrule Elm Co.’s request as the anticipated date of the Secondary  
 12 Distribution remains unchanged from the date set forth above.

13           **C. The Court Previously Authorized Rust and Class Counsel to Re-Examine  
 14 Previously Approved Claims That Aroused Suspicion**

15       Elm Co.’s Objection requests that the Court order Rust and Class Counsel to “cease any  
 16 unauthorized reaudits of previously approved claims and pay out what is owed to timely claims  
 17 that cashed their initial checks.” Objection at 5. Contrary to Elm Co.’s representation, the Court  
 18 authorized Rust and Class Counsel to “audit/re-examine” previously approved claims “consistent  
 19 with their obligation to pay only qualified claimants.” *See, e.g., Order Setting Hearing* (ECF No.  
 20 1358) (allowing Rust and Class Counsel to re-examine Xanadu Corp.’s previously approved  
 21 claim); Secondary Distribution Order ¶ 2 (overruling Xanadu Corp.’s objections because it failed  
 22 to “establish that it had any qualifying purchases” based on Rust and Class Counsel’s re-  
 23 examination of its claim); Order Denying Motion for Reconsideration (ECF No. 1385) (remarking  
 24 that Plaintiffs “list[ed] a number of reasons why Xanadu’s claim aroused suspicion” and “[t]hose  
 25 reasons amply justified re-auditing Xanadu’s claims.”). The Court should overrule Elm Co.’s  
 26  
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1 request as the Court has authorized Rust and Class Counsel to re-examine previously approved  
 2 claims that aroused suspicion.

3       **D. Elm Co.'s Claim Aroused Suspicion**

4 Plaintiffs recently notified the Court, "Due to circumstances out of their control. . . this  
 5 secondary distribution has been further delayed." Plaintiffs' Response to Objector and Claimant  
 6 David Gould's Motion to Compel Prompt Compliance with the Second Distribution Order at 2.  
 7 These circumstances caused Rust and Class Counsel to re-examine 17 previously approved  
 8 claims, including Elm Co.'s claim, earlier this year because they aroused suspicion. Decl. of Joel  
 9 K. Botzet ("Botzet Decl.") ¶ 4.

10 Specifically, Elm Co.'s claim aroused suspicion warranting re-examination for the  
 11 following reasons: Like Xanadu Corp., in response to the initial audit in 2020, Elm Co. submitted  
 12 a 1.5-page affidavit in support of its 1,782 claimed tickets, including 212 fuel surcharge tickets,  
 13 which are U.S.-originating travel to Japan on JAL and ANA flights between February 1, 2005  
 14 and December 31, 2007 that included a fuel surcharge. *Id.* ¶ 5, Ex. 1 (Elm Co.'s response to Rust's  
 15 initial audit in 2022). Elm Co. provided no other documentation, such as receipts showing ticket  
 16 purchases, cancelled checks, credit card statements, travel itineraries, or email confirmation of  
 17 ticket purchases. *Id.* ¶ 5.

18 Elm Co.'s number of claimed tickets, particularly fuel surcharge tickets, is suspicious  
 19 because it is purportedly a Costa Rica company with a Costa Rica address.<sup>2</sup> *Id.* ¶ 6. Additionally,  
 20 Rust was unable to confirm Elm Co.'s existence and likelihood of purchasing tickets. *Id.* Rust  
 21 was also unable to find any online presence for Elm Co. or its Managing Director, Jeanette  
 22 Stevens. *Id.* Elm Co.'s address does not appear on Google Maps. *Id.* Taken together, these facts  
 23 suggest Elm Co.'s claim is fraudulent. *Id.*

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 26       <sup>2</sup> Elm Co.'s Objection lists its address as Elm, Apartado 10210-1000, San Jose, Costa Rica, SC  
 27 10102. Elm Co.'s Objection at 5-6.

1           **E. Elm Co. Failed to Establish That It Had Any Qualifying Purchases**

2           On March 24, 2025, to further deter potentially fraudulent claimants, Rust emailed and  
 3 mailed Elm Co. requesting additional information to validate its claim as part of its re-  
 4 examination of Elm Co.’s claim; Rust requested a response by April 24, 2025. Botzet Decl. ¶ 7,  
 5 Ex. 2 (March 24, 2025 Audit Letter). The March 24, 2025 Audit Letter stated, “Failure to respond  
 6 with the requested information by the deadline may result in ELM CO’s claim being ineligible  
 7 for the Secondary Distribution.” *Id.* ¶ 7. Elm Co. failed to respond by that date. *Id.* On May 2,  
 8 2025, Rust emailed and mailed a final determination letter to Elm Co., stating that it is ineligible  
 9 for the secondary distribution. *Id.* ¶ 7, Ex. 3 (May 2, 2025 Determination Letter). In response to  
 10 Rust’s email, Ms. Stevens replied, challenging Rust’s re-examination of Elm Co.’s claim. *Id.* ¶ 7,  
 11 Ex. 4 (Correspondence between Rust and Elm Co. from March 25, 2025 to May 6, 2025). She  
 12 also failed to provide any additional information to validate Elm Co.’s claim. *Id.* ¶ 7.

13           Elm Co.’s Objection now raises an additional red flag. *Id.* ¶ 8. Rust and Class Counsel  
 14 note that USPS Tracking for Elm Co.’s Objection indicates that the shipping label was created on  
 15 May 6, 2025 and USPS took possession of the package in Flint, Michigan—nowhere near Costa  
 16 Rica—on the same date.<sup>3</sup> *Id.* ¶ 8, Ex. 5 (Printout of USPS Tracking for Elm Co.’s Objection).

17           **III. CONCLUSION**

18           The Court should overrule Elm Co.’s Objection because Class Counsel, as the Court-  
 19 appointed Settlement Class Counsel, and Rust, as the Court-appointed Settlement Administrator,  
 20 have the authority to re-examine suspicious claims; Class Counsel and Rust have an obligation to  
 21 pay only qualified claimants; and Elm Co. failed to establish that it has any qualifying purchases.  
 22 Elm Co. is not a Settlement Class Member and is not entitled to share in the secondary distribution  
 23 to occur on or before July 1, 2025.

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24           <sup>3</sup> USPS Tracking, USPS.COM,  
 25 <https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=3&text28777=&tLabels=92055901526619002200832731%2C%2C&tABt=false> (last visited May 13, 2025) (showing  
 26 USPS Tracking Statuses for Tracking Number: 92055901526619002200832731).

1 Dated: May 13, 2025

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